

LIBRARY
SUPREME COURT, U.S.

Office of the Clerk, U.S.
FILED
JAN 11 1956
RECEIVED & FILED, DIST.

No. 153

In the Supreme Court of the United States

October Term, 1955

ELMER L. HARRIS, Petitioner

NATIONAL LABOR EDUCATION BOARD, Respondent

ON WRIT OF HABEAS CORPUS TO REMOVE FROM OFFICE OF THE BOARD OF NATIONAL LABOR EDUCATION

ELMER L. HARRIS, Petitioner

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statute involved.....	2
Statement.....	2
1. The facts.....	2
A. Petitioner's no-distribution rule.....	3
B. Conditions impeding effective dis- tribution outside the gates to com- pany property.....	4
2. The Board's conclusions and order.....	7
3. The judgment of the court below.....	8
Argument.....	8

CITATIONS

Cases:

<i>National Labor Relations Board v. The Babcock and Wilcox Company</i> , No. 250, this Term.....	2, 8
<i>National Labor Relations Board v. LeTourneau Company of Georgia</i> , 324 U. S. 793.....	8
<i>National Labor Relations Board v. Seampulse, Inc.</i> , No. 251, this Term.....	8

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, <i>et seq.</i>).....	2
---	---

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 422.

RANCO, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The judgment of the court below (R. 143), affirming the Board's order without opinion, is reported at 222 F. 2d 543. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 100a, 130a-138a) are reported at 109 NLRB 998.

JURISDICTION

The judgment of the court below was entered on April 27, 1955 (R. 143). The petition for a writ of certiorari was filed on September 26, 1955, and granted on November 14, 1955 (R. 144). The

jurisdiction of this Court rests on 28 U. S. C. 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off-company property in the immediate vicinity of the plant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in the Appendix to the Board's brief in the companion case of *National Labor Relations Board v. Babcock and Wilcox*, pp. 48-50, No. 250, this Term.

STATEMENT

1. *The facts*—The Board found that petitioner had violated Section 8 (a) (1) of the Act by prohibiting nonemployee union organizers from distributing union literature on its parking lot during the employees' nonworking time. The facts upon which this finding rests are substantially undisputed and may be summarized as follows:

A. PETITIONER'S NO-DISTRIBUTION RULE

Petitioner, an Ohio corporation with five Ohio plants and principal offices at Columbus, manufactures thermostatic controls for refrigerators, automobiles, and other equipment at its plant in Delaware, Ohio, the only plant involved in this proceeding (R. 101a-102a; 5a, 8a). Upon beginning a campaign to organize petitioner's approximately 900 employees in January 1953, the UAW-CIO (herein called the Union) sought permission to distribute union literature on a company parking lot on the ground that a "dangerous traffic hazard" existed outside the plant gates, thus preventing any reasonably effective distribution of literature off the Company's premises (R. 105a, 130a, 15a). Petitioner replied as follows (R. 105a-106a, 55a, 16a):

"For your information, the long-standing policy of this company, which has also been in effect during previous organizing campaigns, is to restrict distribution of literature of any sort on Company premises to Company representatives and employees of the plant. Your request is therefore denied."

Citing this rule as justification, petitioner has also denied permission to nonemployee representatives of veterans' organizations to sell Buddy poppies on company property (R. 103a-107a). However, petitioner has permitted employees to distribute freely both union and anti-union lit-

erature on company property during their non-working time, and has itself distributed anti-union literature (R. 104a; 65a, 83a-84a, 19a-36a).

B. CONDITIONS IMPEDING EFFECTIVE DISTRIBUTION OUTSIDE THE GATES TO COMPANY PROPERTY

Petitioner's premises occupy about 30 acres in the outskirts of Delaware, Ohio (population 12,200), and are entirely surrounded by a fence (R. 101a-102a; 17a). The only two gates open on adjacent U. S. Highway 42, a two-lane, heavily traveled interurban thoroughfare running roughly east and west (R. 102a; 61a, 17a). A 30-foot strip of public property lies between the gates and the highway (R. 102a; 17a). Both gates are double lane, but the east gate (36 feet wide) is only an exit while the west gate (25 feet wide) serves as both an entrance and an exit (R. 103a; 75a-76a). Petitioner maintains an employee parking lot which is within the gates but separated from the plant and office area by another fence (R. 102a; 17a). Since the entrances to this area are flanked by guard houses where persons desiring admission must pass inspection, access to the parking lot does not insure access to the working areas (R. 102a; 59a).

About a third of petitioner's employees reside in Delaware; the rest live from 5 to 25 miles from

the plant (R. 102a-103a). Although there were about 900 employees when the Union drive began, the plant normally employs about 700 and the work force numbered only 598 at the time of the hearing in October 1953 (R. 101a-102a). A survey made by petitioner disclosed that of this 598, 220 lived in Delaware (about 1.7 miles from the plant), 335 lived within 5 miles of the plant, 25 lived within 10 miles, 123 within 15 miles, 97 within 20 miles, 16 within 25, and one lived over 25 miles from the plant (R. 101a-102a). Practically all of them come to work in private automobiles, for, other than taxicabs, there is no public transportation in Delaware (R. 102a). Coming into petitioner's premises, cars approach from both directions on Highway 42 as well as from Curtis Street, a road to Delaware which joins Highway 42 opposite the plant (R. 103a; 17a). Upon leaving the premises, cars exit by either gate, turn east or west on Highway 42, or cross the highway to enter Curtis Street (R. 103a; 62a, 63a, 77a). There are stop signs inside the gates which warn employees to stop before entering the highway, but about 10 percent of the employees ignore the signs in their hurry to get home (R. 104a; 62a, 63a, 77a-78a). Approximately 14 cars per minute pass the gates—at the east gate in a double lane, so that it requires about 15 minutes to clear the parking lot at the close of the first shift and

5 to 10 minutes at the end of the second (R. 103a).¹ Although shift changes cause a traffic jam on Highway 42 outside the plant, there is no traffic light and apparently no regular or systematic police direction (R. 104a; 70a, 62a, 63a).

After being denied permission to distribute union literature on the parking lot (R. 58a-59a), union representatives on some 25 occasions attempted distribution between the lanes of traffic outside each gate at change of shift (R. 106a; 73a-75a, 78a-79a).² Their success was variable. Although at times in good weather petitioner's vice president observed 100 percent distribution to those car occupants who indicated they desired literature (R. 106a; 63a).³ Union representatives have encountered the following difficulties (R. 106a; 75a-83a): Some cars do not stop (R. 78a). If they do, there is no opportunity for the employees to ask questions because the drivers behind become impatient, honk their horns, bump into the cars ahead, and exhort the distributor to

¹ The plant operates on a 3-shift basis (R. 103a). A survey made by petitioner on September 24, 1953, revealed 401 employees working the first shift, 181 the second, and 13 the third (R. 103a). That same day respondent counted roughly half as many cars on the parking lot as employees at work during each shift (R. 103a).

² On occasion the union representatives stood as much as 30 feet inside the gates, but petitioner's vice president, Opp, tried to prevent this encroachment whenever he observed it (R. 106a).

³ The representatives give literature only to those who indicate they wish it by extending an arm from the car or otherwise (R. 106a, n. 2).

get out of the way (R. 77a-78a). Sometimes the passengers desire literature, but the driver will not stop (R. 80a). In inclement weather, and in the winter, car windows are generally closed and acceptances fall substantially (R. 78a). Standing in the 3-foot space between the lanes of moving cars, the distributor is a traffic hazard and assumes the risk of injury, particularly at night (R. 75a-76a, 82a). Also at night the distributor, blinded by headlights, has difficulty ascertaining how many people are in the cars (R. 82a). At the west gate, with its incoming and outgoing lanes, distribution to incoming cars creates an additional hazard. Because of the heavy traffic on Highway 42, cars approaching the plant must stop, and sometimes line up, to wait for a chance to get across (R. 79a-80a). If an incoming car stops for literature, cars crossing behind it block the oncoming traffic on Highway 42 (R. 79a-80a). Although the speed limit on Highway 42 is 35 miles per hour, many cars go 50 miles per hour or more (R. 81a, 61a-62a).

2. *The Board's conclusions and order*—Upon the foregoing facts and the entire record, the Board, with one member dissenting, found that it was unreasonably difficult for the Union representatives to distribute literature to respondent's employees in the vicinity of the plant entirely off company property, and that the prohibition against distribution by nonemployees, under the circumstances of this case, was an un-

reasonable impediment to the employees' right to receive information about unionism, and hence violative of Section 8 (a) (1) of the Act (R. 107a-113a, 130a-131a, 134a-137a). The Board accordingly ordered petitioner to cease and desist from prohibiting the distribution of union literature by union representatives on its parking lot, to rescind its rule to this extent, and to post an appropriate notice (R. 132a-133a).

3. *The judgment of the court below*—The court below, being of the view that the Board had properly applied the principles established by *National Labor Relations Board v. LeTourneau Company of Georgia*, 324 U. S. 793, and other cases, enforced the Board's order (R. 143).

ARGUMENT

The question presented here is substantially the same as that in the companion cases with which this one is to be heard, *National Labor Relations Board v. The Babcock and Wilcox Company*, No. 250, and *National Labor Relations Board v. Seamprufe, Inc.*, No. 251. For the most part, our answers to petitioner's arguments are set forth in our brief in No. 250, to which the Court is respectfully referred. We add only a discussion of petitioner's contention (Br. 22-25) that in this case the union representatives could and did distribute literature at the plant gates; that the employees themselves were permitted to distribute literature on the plant premises;

and that hence the record does not support the finding of the Board, approved by the court below, that it was unreasonably difficult for the union representatives to distribute literature to the employees off the company's premises.

We think the undisputed facts reviewed in our Statement defeat this line of argument. Here, as in the companion cases, the employees live in and around the nearest town within a radius of five to twenty-five miles from the plant (*supra*, pp. 4-5). In our brief in No. 250 (pp. 39-42), we have already described the difficulties which union representatives face in reaching employees whose homes are thus widely scattered. The adequacy of communication between the union organizers and the employees at the plant gates, which petitioner emphasizes, is more imaginary than real. Practically all of petitioner's employees live beyond walking distance from the plant, and there is no public transportation other than taxicabs. Virtually all of the employees arrive at the plant by private car and are driven directly onto Company property. Although a 30-foot strip of public property lies between the plant gates and Highway 42, the traffic conditions at change-of-shift time make distribution there hazardous at best and possibly dangerous at night or in inclement weather. Even though many of the cars obey the stop sign before entering Highway 42, drivers in a hurry to get home and intent on observing traf-

fic-jam conditions on a busy main thoroughfare are unlikely to be in any position or mood to pay attention to the distributor, who thus becomes a traffic hazard himself. Cars that stop for literature or to ask questions only cause the drivers behind to become impatient, honk their horns, bump the cars ahead, and exhort the distributor to get out of the way (R. 287a-288a; 67a-68a). Passengers who wish to stop are at the mercy of drivers who may not, and both are reluctant to open car windows in winter or bad weather. At such times, attempts at distribution are therefore particularly ineffective (R. 287a-288a; 71a, 69a). In these circumstances, the trial examiner (R. 111a), with the subsequent approval of the Board and the court below (R. 131a, 134a, 143a), could appropriately conclude that the distribution of union literature at the plant gates

* * * is highly impracticable. At best it is hazardous; in twilight and inclement weather it could be dangerous. The busy entrance to a busy main highway seems neither a safe nor a practicable location for the distribution of literature to the occupants of passing automobiles. This is so even though the vehicles may, as required, stop before entering the highway. The driver intent on observing traffic conditions is not likely to be in the position or mood to give his full attention to the distributor, who thus becomes a traffic hazard himself.

That union representatives did distribute outside the entrance gates on some 25 occasions between January and October seems no more suggestive of the adequacy of that technique than it is of the hardness of the distributors and the ineffectiveness of other available modes of communication.

The Board's finding in this respect is not, as petitioner asserts, weakened by the circumstance that petitioner permits employees to distribute union literature on its property and that they have in fact done so. At best it is a fortuitous thing whether employees may wish to undertake distribution of union literature. Moreover, and more important, although fellow employees may pinch-hit to distribute literature, the employees generally are nevertheless deprived of ready access to the union representatives. And as we have indicated in our brief in No. 250 (pp. 29-30), these representatives are, by virtue of their training and background, full-time specialist practitioners constituting the employees' best source of information about unionism.

In short, this case cannot be distinguished from the companion cases. As in those cases, the facts here clearly justified the Board's finding that it was unreasonably difficult for union representatives to reach the employees outside of company property in the immediate vicinity of the plant. For the reasons stated in our brief in No. 250, this circumstance, balanced against

considerations of the employer's convenience and property interests, warranted the Board's order against petitioner's rule forbidding distribution on its parking lot. Accordingly, we believe that the decision below, sustaining the Board, should be affirmed.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,
National Labor Relations Board.

JANUARY 1956.